

The Workplace Partnership Group conducted a listening session on Thursday, January 7, 2016, to engage employees and employers within the construction and manufacturing industries. The session was conducted at the Minneapolis Labor Center, 312 Central Avenue, beginning at 4:30 p.m. A select number of panelists representing both employees and employers were invited to provide their perspectives in response to a pre-arranged set of questions related to policy issues concerned with earned sick time and paid time-off (PTO). The following is a summary of the feedback from those panelists, as well as general commentary from those members of the community in attendance for this listening session.

### PANEL FEEDBACK

#### **Question #1. How and when would sick leave be used?**

Within the building trades union, paid sick is something covered in the collective bargaining process and agreements. Several panelists noted that the variable and transitory nature of the construction industry, where employees often work on multiple, different sites and/or projects from day-to-day, made a uniform policy related to earned sick time and PTO difficult to administer. As a consequence, many of the bargained agreements established specific funding mechanisms to provide the equivalent of paid time-off to support a worker's needs (whether sick, vacation, family care, etc.), even when the individual employee may be out of work. Some panelists pointed to federal laws which included exemptions for the construction industry as evidence that the application of a uniform policy would, at best, be difficult if not impossible to administer.

Panelists supported the general philosophy that a fair and safe work environment included the ability for employees to stay home when sick (or caring for sick family members). One panelist, whose company provided PTO to its employees, indicated that this approach respected workers as adults, and left the tracking and reporting of PTO to the employees; the company did not keep records. As a consequence, a policy mandate that would necessitate tracking, reporting, and recordkeeping would impose additional administrative burdens on the company, which was not seen as promoting a business-friendly environment or a respectful approach to treating employees like adults and holding workers accountable.

Several panelists agreed that benefits—such as paid sick time and PTO—were better left to negotiations between employers and employees, often through a collective bargaining unit, and both employers and employees represented on the panel indicated support for leaving those policy considerations to the collective bargaining process. Several employer representatives discussed the vacation and savings plans included in bargaining agreements that provided an accrued bank of hourly-based income for use at an employee's discretion. One panelist indicated that if a city-wide policy mandate on earned sick time and PTO were implemented, it would be preferable to provide an express exemption for the construction industry and to ensure that any such policy mandate did not result in the unintended consequence of reopening the collective bargaining agreements already in place.

With respect to the manufacturing industry, some representatives pointed out that the United States continues to lose jobs to other countries, resulting in an industry position equivalent to levels in 1941; and this heavy foreign competition, it was alleged, forced many manufacturing companies to adopt a production orientation focused on “to-order” and not “to-inventory.” Thus, if employees are absent due to illness (or other factors), the employer may lose business and, as a consequence, jobs. One employer representative from the manufacturing industry stated that in 1996 his company replaced paid sick time with a 3% across-the-board increase in pay for all hourly employees with instructions that employees should use that increase in compensation to cover any gaps in their personal needs, including sick time if they were unable to work. This same representative expressed concern that if the city government mandated paid sick time unilaterally

without any industry-specific exemptions, his company—as one example—would be forced to take away that 3% compensation increase to help offset the corresponding increase in operational impacts that could be expected to result. Some employer representatives also warned that businesses could relocate outside Minneapolis, taking revenues and jobs with them to other communities, noting that business investment in the city could be negatively affected due to the uncertain and instable regulatory environment. Some employer representatives expounded on this issue by pointing out that multiple work sites across the state would require different work conditions, varying administrative burdens, and this could jeopardize those businesses and facilities in Minneapolis, as well as the employees at those locations. Some reiterated that employees are involved in determining workplace policies, and, therefore, the need for the city government to insert itself was not seen as a helpful tactic.

Several employer and employee representative panelists clarified that, within their respective industries, they have evolved to a focus on paid time-off, and had eliminated references to “sick time.” They indicated that “sick time” was an antiquated concept, and stated the broader concept of earned paid time-off, to be used at the employee’s discretion, was a better approach than a narrower focus purely on earned sick time. These individuals stated that any policy that focused exclusively on earned sick time would, for them, be an unwelcome step backward. The concept of paid time-off gave individual employees the ultimate power to use their earned time to meet their personal needs, whether for illness or family needs, vacation, religious observance, or something else. Employers indicated they didn’t want to be involved in why time was taken from work; that was a matter for employees. Thus, a move toward uniform earned sick time was also seen as a policy requirement that employers be more directly involved in the personal lives of employees. Some panelists points out that because the core concept of “paid time-off” had been defined and incorporated into established bargaining agreements, any effort to introduce a change in those concepts could create unanticipated challenges, both for employers and employees and would, therefore, not be helpful.

Some suggested that if there was overwhelming support for specific earned sick time—separate from PTO and similar measures already covered in collective bargaining agreements—then it should be handled as a state legislative issue, not something handled within one city in the state. One panelist questioned the unknown and unanticipated consequences of a policy mandate, and pointed to a study [*“The Effect of Mandatory Paid Sick Leave Policies”* by the Freedom Foundation] which purported to analyze the impact of such policies in certain jurisdictions, including San Francisco, Seattle, and Washington D.C., and which he said concluded that most of the intended benefits of mandatory sick-leave policies have not materialized in those communities. This same panelist said he believed that the proposal had been unnecessarily rushed and suggested that more time needed to be invested in researching the full scope of potential impacts on business operations and engaging more perspectives.

With regard to specific examples, one panelist said his company provided its workers with PTO, which provides maximum flexibility in how employees may use the accrued time since it is at the employee’s discretion. The company provides 19 days equivalent PTO, which could increase up to 39 earned days per year, based on length of service, with an allowance to carry-over up to 150% of the annual allotment. For exempt employees, a further benefit included a sabbatical bank which allowed the employee to bank additional PTO hours up to 3 months every few years.

From a manufacturing perspective, one panelist indicated that paid sick time or personal PTO was a critical way that many entry-level employees were able to survive the early years in the job, primarily because other forms of leave accrue more slowly. Sometimes, because of hardships experienced by new employees (or their families), there was a critical need to access paid time that secured the job while the employee was away addressing personal needs. So, in that instance, within the manufacturing industry, PTO is seen as an important tool for securing a job during the early years of employment and, therefore, a mandated policy on earned sick time or PTO was seen as a potential asset. In response to clarifying questions, this panelist indicated that his company provided between 15 and 30 days of vacation, based on tenure, and there is no separate accrual of “sick time.” There is not distinction or differentiation; when an employee calls-in and is absent, there is an operational impact on the company because production may, in some instances, halt or

be deferred. Unlike in the restaurant industry where skills are more interchangeable, the manufacturing industry does not staff to “bench strength,” and there is rarely another worker with the same skill sets or required experience to cover when an employee is absent. There is limited redundancy built-in with respect to staffing in the manufacturing industry, so companies are very dependent on the workforce to show up and perform. So, when an employee is absent (regardless of the reason), there is the potential for a negative impact on the business. It’s a loss of business productivity.

**Question #2. What, if any, measures help ensure that employees and employers are not penalized or unduly burdened?**

Employer representatives on the panel suggested that businesses which already met the spirit or intent of the proposed earned sick time and PTO policy should be exempted from further regulations or requirements. They also raised concern about the cross-jurisdictional nature of any policy proposal, noting that employees in the construction industry and, to a lesser extent, manufacturing were more likely than most employees in other sectors to be engaged in multiple job sites or projects under multiple employers; therefore, the business impact within the larger regional and across the state had to be considered. Others were uncertain what additional administrative requirements any such policy might entail; for example, reporting and recordkeeping issues to track time, verify compliance, etc. What would the city government expect in terms of monitoring and compliance? What additional resources would be required for businesses to satisfy these requirements? Some cautioned that there are inevitably bad actors in every industry, and an overreach could have negative consequences to all employers while allowing the bad actors to continue to exploit policy loopholes. In the end, some employers worried that compliance could hurt business, possibly cause businesses to shut down (especially small businesses), while not addressing the real problem of the bad actors in the industry who might otherwise continue, regardless of the new policy mandate.

For those employers who have employees working in multiple locations, both within and outside of Minneapolis, there was concern about how to track those employees’ movements in and out of the city and how that might impact the accrual of earned sick hours or PTO. Some questioned how an effective time-tracking and recordkeeping system could match those issues. Further, it was pointed out that one of the most significant issues being addressed by Minneapolis, and by Minnesota more broadly, was the disparities between certain populations and the negative economic consequences resulting from those disparities; to that end, some questioned how a mandate on sick time and PTO might negatively impact minority and women-owned businesses, which already faced some disadvantages, particularly in construction and manufacturing industries.

In response to clarifying questions, panelists again emphasized the unique nature of the construction industry and, to a lesser degree, manufacturing in that the industry is characterized by the transient, part-time, and seasonal nature of the work. Some pointed to the model of banking certain per hour amounts for discretionary use by employees as a model for the industry; however, the power of employees to collectively bargain was seen as the best advantage, and none of the panelists wanted to see any policy that might undermine those agreements that are already in place, or any future agreements that might be reached between employers and employees.

**Question #3. What’s a meaningful amount of sick/paid time-off?**

Panelists all agreed that “meaningful,” like beauty, was in the eye of the beholder; in this case, it is determined by the individual employee, or potentially the employer, based on the perceived benefits of its use and how it might apply and be administered. Panelists reiterated a unilateral agreement that employees deserved a healthy and safe work environment; however, how that was achieved was an issue, and was something most agreed should be left to the employer and employees to determine.

As one panelist pointed out, it’s a fact that workers get sick, regardless of the industry in which they work. Some panelists suggested that more research and comparative studies in other jurisdictions might provide

instructive feedback about how such policies might be implemented in Minneapolis. On average, the panelists agreed that a minimum of between 3 and 5 days per year should be allocated to employees, whether dedicated for sick-time use or PTO, possibly increasing based on tenure. This might be a good starting point for discussion.

#### **Question #4. How do some employers currently handle this issue?**

*This question was addressed in responses to other questions; see above for details.*

### **GENERAL COMMUNITY FEEDBACK**

The following is a summary of general commentary from the public in attendance at the listening session.

- “I believe that unions and employers have sat at the table together and bargained in good faith, and I think they have the tools—the contract language—that takes care of everything we need. I don’t think the City should get involved in any of this. We have FMLA, unpaid leaves, vacation, personal paid time off; so, I believe we have the tools. The City shouldn’t circumvent the collective bargaining process.”
- “I think the market does self-correct, and I think that good employees are more and more valuable all the time, and for those employers that don’t treat employees properly, those workers will find something else by and large. I don’t think the answer is for the City to pass an ordinance to correct whatever problem may be out there.”
- “I have a collective bargaining agreement that covers my pension, and it covers me where I go, from company to company. If this passes, there would be a timeframe where an employee would be required to work before they earned or were able to collect the benefit. How would I collect sick time from multiple employers? Because of the transient and seasonal nature of this industry, how would I track that? I’d like to see the collective bargaining aspect for this industry exempted from this regulation. Through the bargaining process, I can take my benefits with me from one employer to the next.”
- “The common denominator here tonight is that not everything fits in the same box. Construction and manufacturing are not the same industries; there are differences between the two, and they aren’t like other industries either. We talked about hospitality, and the restaurant industry is dissimilar, too. There are already laws in place right now that if a worker is physically ill, then it’s against the law to go to work. We have the existing law in place. We need to do a better job of enforcing the existing laws instead of creating additional regulations and bureaucracy. I think looking at the minimum wage might be a better short-term approach that provides a more holistic benefit to all employees, rather than earned sick time.”